Beverly Health and Rehabilitation Services, Inc., its Operating Regional Offices, Wholly-Owned Subsidiaries and Individual Facilities and each of them and/or its Wholly-Owned Subsidiary Beverly Enterprises-Mississippi, Inc., d/b/a Beverly Health Care-Centreville, a Single Employer *and* United Food and Commercial Workers Union, Local Union No. 1657, AFL–CIO. Case 15–CA–14297

June 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On February 19, 1999, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Beverly Health and Rehabilitation Services, Inc. and Beverly Enterprises-Mississippi, Inc., d/b/a Beverly Health Care-Centreville, Centreville, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Charles R. Rogers, Esq., for the General Counsel.
Keith R. Jewell, Esq., for the Respondent.
J. Cecil Gardner and *Mary E. Olsen*, *Esqs*., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in New Orleans, Louisiana, on November 19, 1998. The charge was filed on April 15, 1997, and amended on May 30 and June 27, 1997.[1] The complaint was issued on June 27. It was amended at the hearing to reflect the correct names of the Respondent and Charging Party. The complaint alleges that Respondent Beverly, a single employer, at Beverly Health Care–Centreville, violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing to provide the Union with requested relevant information. Respondent's timely answer denies all violations of the Act.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent, and Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is a health care institution engaged in the operation of nursing homes at various locations including its Beverly Health Care-Centreville facility in Centreville, Mississippi, where it annually derives gross revenue in excess of $100,000 and purchases and receives goods valued in excess of $5000 directly from points located outside the State of Mississippi. I find and conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The answer admits, and I find and conclude, that United Food and Commercial Workers Union, Local Union No. 1657, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. SINGLE EMPLOYER

The complaint alleges, and the answer denies, that Beverly Health and Rehabilitation Services, Inc., its operating Regional Offices, wholly-owned subsidiaries, and individual facilities are a single employer. The General Counsel requested that I take judicial notice of the Board decision in *Beverly California Corp. (Beverly III)*, 326 NLRB No. 30 (1998), in which the Board found, as it had in *Beverly I* and *II*,[3] that Respondent Beverly was a single employer. Counsel for Respondent, although refusing to concede that Respondent was a single employer, advised that he intended to offer no evidence on the single-employer issue. Consistent with the finding in *Beverly III*, I find that Respondent Beverly is a single employer.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Union was certified as the exclusive collective-bargaining representative of Respondent's nonprofessional employees at the Centreville facility on November 18, 1996. The majority of these employees, approximately 50 in a unit of 77, work as certified nursing assistants (CNAs) providing direct care to patients. Skilled care is provided by registered nurses and licensed practical nurses who are excluded from the unit. On November 22, 1996, the Union, in a 10-page letter signed by Secretary/Treasurer Ted A. Deason, requested information regarding bargaining unit employees, rules that employees are expected to follow, and, in paragraph IV, information regarding "Staffing/Work Load Issues." At issue in this case is the information sought in the following four subparagraphs of paragraph IV, 1:

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] All dates are in 1997 unless otherwise indicated.

[2] Respondent's unopposed motion to receive R. Exhs. 6–11 is granted.

[3] *Beverly Enterprises* (*Beverly I)*, 310 NLRB 222 (1993), enfd. as modified 17 F.3d 580 (2d Cir. 1994); *Beverly Enterprises* (*Beverly II*), 326 NLRB 153 (1998). In *Beverly I*, Respondent admitted that it was a single employer.

> j. [T]he average number of Medicare Part A residents for each month of 1995.
>
> k. [T]he number of therapy units performed for each therapy discipline[:] PT [physical therapy], OT [occupational therapy], ST [speech therapy], for each month of 1995.
>
> l. [T]he Nursing Monthly Trend Report for each month of 1995.
>
> m. [T]he nursing hours of labor per patient day for each pay period of 1995. Please specifically include the hours of labor per day for CNAs, or copies of your Labor Reports.

Respondent, by letter dated November 27, 1996, and signed by R. Wade Lemon Jr., Respondent's regional director of labor and employment, requested that the Union negotiate regarding the manner and form of production and the allocation of costs regarding all of the requested information. The letter then requests clarification of the relevance of certain requested information, which the letter states appears to be irrelevant and/or confidential, including the information sought in subparagraphs j, k, l, and m.

By letter dated December 9, 1996, Deason, on behalf of the Union, responded to Lemon stating:

> Under settled law, Local 1657, as the exclusive collective bargaining representative of the employees at the Centreville Health Care Center, has a right to information relevant to its collective bargaining and representational functions. *NLRB v. Truitt Mfg Co*., 351 U.S. 149 (1956). Under established law, information about unit employees' terms and conditions of employment is presumptively relevant. *E .I. Du Pont & Co.*, 271 NLRB 1153, 1155 (1984). Therefore, the Union has no obligation to show that requested information is related to a particular grievance or controversy in the facility. *Goodyear Atomic Corp*., 266 NLRB 890, 891 (1983). . . . Beverly has the burden of proving the confidentiality of any information that it resists producing. *Washington Gas Light Co.*, 273 NLRB 116 (1984).

On December 12, 1996, and on various dates thereafter, Respondent provided much of the information requested by the Union. By letter dated December 13, 1996, Respondent withdrew its request for clarification of the relevance of hours of labor per patient day as to CNAs; however, it did not at that time provide this information to the Union. The letter also states that Centreville is not refusing to provide the other information, "It only seeks clarification of the relevancy of those items requested which do not appear to be presumptively relevant and/or are confidential or financial in nature." The letter does not assert that Respondent was refusing to provide any document because of confidentiality, only relevance.

The parties commenced negotiations in January. The information sought in subparagraphs j, k, l, and m was never specifically discussed at the bargaining table. There was discussion regarding arrangements for representatives of the Union to copy various records. On June 24, the executive director of the Centreville facility, David Seay, wrote the Union a letter stating:

> The Union has not responded to my letters offering dates to come to the facility to review and/or copy relevant requested records. Please provide me with dates as soon as possible. Any and all relevant records not previously sent will be made available. Further, it is proposed that you will also be provided access to arguably irrelevant documents responsive to request IV.1.k physical and IV.1.m. The only information upon which further clarification, discussion and negotiation are requested are items IV.1.j, IV 1.k, occupational and speech, [and] IV.1. l.

The visit to the facility took place on July 22. On that date, Seay handed union organizer Elaise Fox a document reflecting the number of units of physical therapy administered and a document reflecting the CNA hours of labor per patient day for the period October 3 through December 6, 1996.

It is undisputed that Respondent did not provide the Union with the information it requested regarding the average number of Medicare Part A residents for each month of 1995 or the number of therapy units of occupational therapy and speech therapy performed for each month of 1995. By letter dated August 5, Seay addressed the Union's request for Nursing Monthly Trend Reports stating:

> Lastly item IV.l, of the remaining requested items to be negotiated are records now [sic] I assume you are incorrectly referring to as "trend reports." Centreville has no documents called "trend reports."

This letter, although arguably not false, was not straightforward. At the hearing, Respondent's counsel asked Jerri Bagley, director of nursing at Centreville, "[Did] Centreville maintain any record, to your knowledge, in '95 and '96, called a Nursing Monthly Trend report?" Bagley responded, "Yes." Apparently realizing that Bagley's initial answer contradicted Seay's representation to the Union, counsel asked Bagley what other names the report was known by, and she responded, "Quality Indicator Report." Bagley testified that the report was a "summary of how things are going, to help identify problems or areas of concern." She then noted that the report was to help the facility "keep in line with state . . . minimum standards and the requirements that the government [has] put forth for healthcare facilities." Seay testified that some aspects of the report, such as the number of therapies administered, relate to revenue.

Nursing homes receive payment pursuant to Medicare Part A for eligible patients who are admitted to the nursing home within 30 days of a 3-day hospitalization and who require skilled care. Reimbursement is limited to 100 days. Bagley explained that some of the patients at the Centreville facility are ambulatory and require little care whereas others require total care. Even some patients who are confined to a wheelchair require little care; after being dressed, they are "up and about and gone." The facility consists of two wings, one with 48 beds, the other with 57, a total of 105. In the wing containing 57 beds, 15 are authorized for Medicare Part A patients. This section of the wing is designated the "skilled unit."[4] The CNAs refer to the skilled unit as the "valley," which they consider to be the hardest part of the facility in which to work. Normally, one CNA is responsible for eight patients, but two CNAs are assigned to the skilled unit. Thus, if it were full, each CNA would be responsible for 7.5 patients. Bagley, in less than precise terms, testified that the number of Medicare Part A pa-

[4] Contrary to Respondent's brief, the skilled unit consists of only 15, not 57, beds. Bagley made this clear when she testified that if a 16th patient, otherwise eligible for Medicare Part A, was admitted to the facility, "He's not skilled."

tients, "[a]t any given time, it could be one . . . .[to] [n]o more than 15."

Gary Gomes, business agent for Local Union No. 1996, is a former employee of Respondent Beverly, having left in 1995.[5] For his last 4 years of employment, Gomes was administrator of Respondent's Windermere Nursing Home in Augusta, Georgia. In addition to his duties as business agent, Gomes assists with various union research projects. Gomes testified that, in his experience, the skilled unit of the facility in which Medicare Part A patients are located is more heavily staffed that the rest of the facility, explaining that Medicare Part A patients require more staffing because they are more acutely ill and require more therapies. Bagley agreed that Medicare Part A patients are supposed to take more skilled care "but because of our census, that doesn't always hold true." Respondent did not adduce any evidence establishing that, because of the census at Centreville, this did not "hold true" at any time relevant to this proceeding. Gomes explained that there is a direct correlation to the amount of therapy a patient is receiving and the labor required from a CNA to assist the therapist. Thus, a patient who has had a stroke and is being rehabilitated receives instruction from a therapist regarding how to become self-sufficient again. The CNA responsible for that patient will be instructed by the therapist regarding how to assist the patient in performing the activities that the therapist has prescribed. Bagley explained that, at the Centreville facility, after the CNA has been trained to provide the prescribed therapy, the therapist will "oversee and make sure that the CNA is providing the care as they were instructed."

Therapy units are typically measured in 15-minute increments. Bagley explained that, as a general rule, physical therapy refers to below the waist, involving use of the legs; occupational therapy refers to above the waist, involving use of the arms; speech therapy refers to use of the mouth, which includes swallowing. Some patients undergoing speech therapy must be monitored whenever they eat to assure that they do not choke. Bagley noted that, insofar as therapy was successful, the care required from the CNA would decrease.

The nursing monthly trend report sought in the Union's information request is now designated as the quality trend indicator. Although Respondent keeps this monthly document confidential, it does not identify any patent by name. The 1-page report, a redacted copy of which was placed in evidence, reflects various items including the number of patients on psychotropic medications, the number of falls and falls involving significant injury, the number of patients on state mandated restorative nursing programs, and information relating to pressure ulcers, including the number of patents with pressure ulcers, the number of pressure ulcers, the number of patients who had pressure ulcers when they were admitted, and the number who acquired pressure ulcers after being admitted.[6] Bagley explained that the purpose of the restorative nursing program, required by the State of Mississippi, was to "maintain people at their maximum without a decline. This means we walk them" CNAs are responsible for assisting patients on these programs. Bagley noted that the CNA responsible for a particular patient on a restorative nursing program might be directed to work with the patient with regard to such tasks as increasing the distance the patient could walk. Bagley denied that any information on the report affected CNA staffing. She testified that, if the report revealed an increasing number of falls, she would interpret it as showing that someone was not doing his or her job rather than inadequate staffing.

Gomes credibly testified that if the quality trend indicator revealed a problem with pressure ulcers, weight loss, and falls that it would be a general indicator that "there's not enough staffing." He explained that pressure ulcers are an indictor of the quality of care being provided, noting that if patients are not being turned regularly because the staff is inadequate, the number of pressure ulcers increases. Bagley testified that, at Centreville, there were only two acquired pressure ulcers. She confirmed the relationship between staffing and pressure ulcers by agreeing that the small number of acquired pressure ulcers at Centreville indicated that the staffing levels at Centreville were correct.

Regional Director of Labor and Employment Lemon serves as Respondent's chief negotiator. He testified that, at Centreville, union negotiator George L. Seidenfaden Sr., told him that the Union was seeking a "me too" contract, similar to the existing collective-bargaining agreement between the Union and Respondent at several Alabama facilities. Although that contract contains no staffing provisions, article 36 provides for a labor-management committee that is empowered to address various topics including specifically patient care and staffing. Lemon, who had not negotiated the Alabama contract, testified that Respondent was unwilling to agree to that contract at Centreville. Seay testified that, in the course of negotiations, Seidenfaden stated that the Union wanted the information relating to Medicare Part A patients and units of therapy in connection with making its economic proposals. There is no evidence of any response by any representative of Respondent to this additional basis for the Union's information request. In a conversation away from the bargaining table, Lemon testified that Seidenfaden, in support of the union's demand for a "me too" contract, threatened patient care lawsuits, class action lawsuits, and, pursuant to "conclusive proof that we'd engaged in Medicaid fraud," contact with the Mississippi State Department of Health.

Respondent submits that a pamphlet entitled "Bad Care at Beverly" and letter are relevant to my consideration of this case.[7] The pamphlet, published by the Union in 1996, catalogues citations received by Beverly's Alabama facilities from 1993 through 1995. The letter, signed by Seidenfaden, publicizes the Board's decision in *Beverly III*. It begins with the salutation "Dear Sponsor." Attached to the letter are excerpts from the Board's decision and a form and envelope addressed to the Union inviting requests for information regarding resident care, staffing, state records, lawsuits filed against Beverly, and "How I, as a Resident Sponsor, can get legal assistance on issues that affect my loved one." There is no evidence that any matter in either of these documents came from information

[5] The testimony of Gomes was given on November 17, 1998, in Case 15–CA–14269, which involved Respondent's Montgomery, Alabama, Tyson Health and Rehab Center. The parties agreed that I take notice of the relevant exhibits and testimony in that case insofar as it did not conflict with evidence presented at this hearing. The transcript and exhibits in that case have been copied for ease of reference and submitted as part of the record in this case.

[6] Pressure ulcers are referred to as pressure sores, bedsores, and "decubs," from the medical term "decubitus ulcers." The Centreville quality trend indicator refers to pressure ulcers.

[7] These exhibits were received in Case 15–CA–14269. See fn. 5, supra.

provided to the Union by Respondent. Respondent presented no evidence disputing the accuracy of any factual statement in either document.

B. Analysis and Concluding Findings

It is well established that a union's request for information relating to bargaining unit employees and their terms and conditions of employment is presumed relevant. *Samaritan Medical Center*, 319 NLRB 392, 397 (1995). This principle of presumed relevance was clearly stated in the Union's letter of December 9, 1996. That letter was written in response to Respondent's request for clarification of the relevance of various items of information sought by the Union, including the information sought in subparagraphs j, k, l, and m. Respondent presented evidence that Seidenfaden cited an economic basis for requesting Medicare Part A and therapy information; however, the record does not establish whether Respondent had pleaded inability to meet any economic demand. Thus neither his comments nor the case authority cited by Respondent regarding the absence of a presumption of relevance regarding financial data are material to my consideration of the issues in this case. The fact that, at the bargaining table, Seidenfaden stated an additional basis for wanting certain pieces of the information does not vitiate the basis for the initial request. The Union's initial request was made in the context of staffing and workload. Respondent argues that the information was not presumptively relevant and that it was incumbent upon the Union to establish to Respondent's satisfaction that the information was relevant. I disagree. The Board holds that information regarding workload and staffing relates directly to employee terms and conditions of employment and, therefore, is presumptively relevant. Ibid; see also *Western Massachusetts Electric Co.,* 234 NLRB 118, 119 (1978). With regard to presumptively relevant information, "the employer has the burden to prove either lack of relevance or to provide adequate reasons why he cannot, in good faith, supply the information." *WCCO Radio*, 282 NLRB 1199, 1204 (1987). It is well settled that where a party requests information that is relevant to that party's collective-bargaining needs, it is irrelevant that there may also be other reasons for the request or that the information may be put to other uses." *Electrical Workers IBEW Local 292 (Sound Employers Assn.)*, 317 NLRB 275, 276 (1995).

Respondent has not established that the information sought is not relevant in evaluating the terms and conditions of employment, specifically the workloads, of the employees the Union represents. Respondent, in its brief, argues that the Union was seeking staffing information in order "to tell Respondent how to run its operation." This argument fails to acknowledge the mutual obligation of both parties to confer in good faith regarding employee terms and conditions of employment. The significance of staffing issues in nursing homes is demonstrated in various cases, including *Casa San Miguel*, 320 NLRB 534, 552, 556 (1995), and *Youville Health Care Center*, 326 NLRB No. 52 (1998). In *Casa San Miguel*, a CNA responsible for Medicare patients was terminated after taking one patient to the dining room but then failing to respond quickly when a female patient refused assistance from a male CNA. *Youville Health Care Center*, involved protected concerted activity related to staffing issues. The record establishes, and I find, that staffing levels have a direct impact upon the workloads of employees. Even absent the presumed relevance of this information, the General Counsel has established that the information sought is relevant.

Respondent argues that information regarding the number of Medicare Part A patients is not relevant since patients other than Medicare Part A patients require skilled care. The need for skilled care is a criterion for qualification as a Medicare Part A patient and the nursing home is authorized 15 beds for these patients. The portion of the wing where those beds are located is designated the skilled care unit. Since two CNAs are assigned to the skilled unit, the CNA to patient ratio would vary depending upon the number of beds occupied. Thus, if only 10 beds were occupied, the ratio would be 1 to 5 instead of the typical 1 to 8 in other parts of the facility. I would suspect that the occupancy rate would be close to 100 percent; however, Bagley, in a somewhat evasive answer, testified that occupancy could vary from 1 up to 15. I find that the monthly average occupancy rate is relevant to the Union in evaluating the workloads of the employees it represents. The Union is unaware of the actual workload of the CNAs assigned the skilled care unit because Respondent has refused to provide the occupancy rate. I find the information relating to the number of Medicare Part A patients to be relevant, and I further find that Respondent's failure to provide this information violated Section 8(a)(5) of the Act.

Respondent did provide the requested information regarding the monthly number of units of physical therapy for 1995; however, it did not do so until July 22, 8 months after this information was requested on November 22. There is no contention that Respondent provided the requested information concerning units of occupational and speech therapy. All of these units of therapy are reflected on the quality trend indicator; thus, this information would have been provided if the quality trend indicator had been provided. Respondent argues that the carrying out of instructions of therapists to assist in the rehabilitation of patients actually makes the job of a CNA easier since, if the therapy is successful, the patient is more self-sufficient. Although I do not disagree with this proposition, the record establishes that, when assisting patients in continuing their rehabilitation by carrying out the instructions of therapists, CNAs are spending more time with those patients than with patients who are "up and about and gone." In view of this, the information regarding units of therapy is relevant in assessing Respondent's staffing since it affects the workload of unit employees. By delaying providing the information regarding physical therapy and by failing to provide the relevant information concerning occupational and speech therapy, Respondent violated Section 8(a)(5) of the Act.

Seay's letter of August 7 stating that the facility had no "trend reports" was disingenuous at best. Respondent's director of nursing was aware of what document the Union was seeking. Now called the quality trend indicator, the report contains no information identifying any patient. The number of patients on therapy and restorative nursing programs directly affects the workloads of CNAs. The testimony of Gomes and Bagley establishes that the information with regard to pressure ulcers is relevant with regard to staffing. Bagley denied that this report had any effect upon her staffing decisions, and asserted that if the report reflected a problem, such as an increased number of falls, she would attribute the problem to dereliction on the part of employees rather than inadequate staffing. The manner in which Bagley views this report is not, however, dispositive of its relevance. In determining relevance, the issue is not how a

respondent views a particular document but the relevance of the information to the union. "Because employers and unions often have divergent interests, information that is not considered relevant by one party may be highly relevant to the other." *Hofstra University*, 324 NLRB 557, 558 at fn. 3 (1997). The credible testimony of Gomes establishes that if the report reflected a problem regarding falls and pressure ulcers, it would be a general indicator that "there's not enough staffing." His testimony is supported by *Youville Health Care Cente,r* supra, in which various problems, including falls by two patients, were cited to management as evidence that staffing was inadequate. Respondent's failure to provide the Union with the monthly quality trend indicator reports violated Section 8(a)(5) of the Act.

Respondent, in its letter of December 13, 1996, stated that it did not question the relevance of the hours of labor per patient day as to CNAs. This information clearly relates to the workload of CNAs. Despite this, the information requested by the Union was not provided. The Union requested this information for each payroll period of 1995. Respondent, although ceasing to dispute the relevance of this information in December 1996, did not respond to the request until July, and at that time provided information from October until December 1996, a period of less than 13 weeks. Respondent, by failing to provide this relevant information for 1995, violated Section 8(a)(5) of the Act.

The Union's request for nursing hours of labor per patient day specifically requests that the response "include the hours of labor per day for CNAs, or copies of your Labor Reports." Respondent, in its letter of December 13, stated that it did not question the relevance of the information as to CNAs. The Union thereafter never requested this information as to nonunit employees, nor did the Union explain why it needed this information. The Charging Party, in its brief, argues that Respondent's failure to provide this information violated the Act. Established precedent is contrary to the Charging Party's position. Information pertaining to nonunit employees does not enjoy a presumption of relevance. *Westinghouse Electric Corp.*, 239 NLRB 108 (1978). With regard to information that is not presumed relevant, "an articulation of general relevance is insufficient," a specific need must be established. *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995). The Union did not articulate a specific need for this information as it related to nonunit employees. I shall, therefore, recommend that this allegation be dismissed.

Respondent contends that the Union's request for information was made in bad faith, citing the 1996 "Bad Care at Beverly" publication in Alabama, which it charges disparaged and vilified Beverly, and the 1998 letter publicizing the *Beverly III* decision, which it asserts reflects the Union's intent to use information to damage Beverly. It argues that, since the Union was seeking a "me too" contract similar to the Alabama contract that contained no staffing provisions, it had no need for the information and that the request was made to "harass and damage Respondent." Respondent fails to note that the Alabama contract does provide for a labor-management committee. I am unaware of any precedent pursuant to which a union's need for otherwise relevant information is evaluated on the basis of the substance of proposals that a union intends to make but to which the employer has not agreed. In the instant case, Respondent did not agree to the contract that was in effect at its Alabama locations. Consequently, all matters relating to employee terms and conditions of employment, including the workload of CNAs, were on the bargaining table. Staffing levels directly affect employee workloads; thus, the information sought was relevant. If Respondent had agreed to the "me too" contract, the information would be relevant to the Union representatives on the labor-management committee that is established in that contract since patient care and staffing are included among the issues that the committee is empowered to address. A request for relevant information is presumed to be in good faith "until the contrary is shown," and the "requirement that an information request be made in good faith 'is met if at least one reason for the demand can be justified.'" *International Paper Co.*, 319 NLRB 1253, 1266 (1995). Seidenfaden's statements regarding legal actions the Union might take as a tactic in support of its bargaining demand for a contract similar to that which Respondent had already executed in Alabama do not establish bad faith. His comment regarding "conclusive evidence" of Medicaid fraud was either true or false. If it was false because Respondent had not committed fraud, Respondent had nothing to fear. If it was true, the evidence obviously could not have come from information that Respondent was refusing to provide the Union. Respondent's brief characterizes Seidenfaden's comments as "malicious threats." Whether viewed as threat or promise, his statements regarding lawful actions that the Union might take in support of its demand for a contract similar to one that Respondent had already executed do not establish that the Union's information request was made in bad faith. The information sought in connection with staffing and workload issues is relevant. Respondent has not established that the request was made in bad faith.

CONCLUSIONS OF LAW

By delaying in providing information reflecting the number of therapy units of physical therapy for each month of 1995 and by failing to provide information reflecting the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational therapy, and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully failed to provide the Union with the relevant information it requested reflecting the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational therapy, and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995, it must provide that information.

Respondent's brief suggests that any recommended order provide for bargaining regarding confidentiality safeguards. Although Respondent expresses concerns regarding confidentiality and other uses to which the Union might put the requested information, the failure to provide the information was based on relevance, not confidentiality. No information sought identi-

fies any patient, thus there is no issue regarding patient confidentiality. The Union's 1996 publication reflects public information, citations issued by the State of Alabama. The letter publicizing the *Beverly III* decision and offering sponsors in Alabama assistance in learning of their legal rights divulges no confidential information. Thus, this case is unlike *Good Life Beverage Co.*, 312 NLRB 1060, 1061 (1993), cited in Respondent's brief. *Good Life Beverage Co.* involved a failure to provide a union with additional information during a hiatus in negotiations after the union had made public information that the employer had previously provided. In those circumstances, the Board found no violation of the Act as a result of the respondent's refusal to provide additional information without discussion of the respondent's "substantial and legitimate confidentiality concerns." Id. at 1062 fn. 10. In the instant case, there is no evidence that the Union has publicized any confidential information provided by Respondent. Board precedent establishes that "it is irrelevant that there may also be other reasons for the [information] request or that the information may be put to other uses." *Electrical Workers IBEW Local 292 (Sound Employers Assn.)*, supra. Respondent's subjective concerns regarding the use to which the Union might potentially put the information it is seeking are unsupported by objective evidence of prior misuse of information by the Union. In the absence of objective evidence establishing "substantial and legitimate confidentiality concerns," I find no basis for altering the traditional remedy of providing the requested relevant information.

The General Counsel has requested several extraordinary remedies, including an employerwide cease and desist order and access to Beverly facilities for organizational purposes. The predicate for this request is Respondent's "extensive and repeated course of conduct and pattern of unfair labor practice violations" as found by the Board in various cases. Insofar as the Board has issued an employerwide cease and desist order in *Beverly III*, I find such an order unnecessary in this case that involves discrete Section 8(a)(5) violations at this single facility that the Union successfully organized. In the absence of any allegation relating to interference with organizational activity, I find no basis for a remedy relating to access for organizational purposes. In view of the foregoing, I deny the request for extraordinary remedies and urge swift compliance with the traditional remedies I have recommended. *Beverly Health & Rehabilitation Services*, 325 NLRB 897, 903 at fn. 33 (1997).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Beverly Health and Rehabilitation Services, Inc., and Beverly Enterprises-Mississippi, Inc., d/b/a Beverly Health Care-Centreville, Centreville, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local Union No. 1657, AFL–CIO as the exclusive representative of the employees in the appropriate unit described below, by delaying furnishing the Union the information it requested reflecting the number of therapy units of physical therapy performed for each month of 1995 and by refusing to furnish the Union the information it requested reflecting the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational therapy and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995. The appropriate unit is:

> All full-time and regular part-time nursing aides, certified nursing assistants, restorative aides, activity aides, central supply clerk, dietary aides, cooks, laundry employees, housekeeping employees, and maintenance employees; excluding all other employees including registered nurses, licensed practical nurses, activity director, social services coordinator, therapists, therapy clerks, receptionists, medical records clerk, dietary manager, maintenance supervisor, housekeeping/laundry supervisor, department heads, office clerical employees, guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information it requested reflecting the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational therapy and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995.

(b) Within 14 days after service by the Region, post at its facility in Centreville, Mississippi, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 27, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with United Food and Commercial Workers Union, Local Union No. 1657, AFL–CIO, your exclusive collective-bargaining representative in an appropriate unit, by delaying in furnishing the information it requested reflecting the number of therapy units of physical therapy performed in each month of 1995 and by refusing to furnish the information it requested reflecting the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational therapy and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995. The unit is:

> All full-time and regular part-time nursing aides, certified nursing assistants, restorative aides, activity aides, central supply clerk, dietary aides, cooks, laundry employees, housekeeping employees, and maintenance employees; excluding all other employees including registered nurses, licensed practical nurses, activity director, social services coordinator, therapists, therapy clerks, receptionists, medical records clerk, dietary manager, maintenance supervisor, housekeeping/laundry supervisor, department heads, office clerical employees, guards, professional employees and supervisors as defined in the Act.

WE WILL provide the Union with the information it requested relating to the average number of Medicare Part A residents for each month of 1995, the number of therapy units of occupational and speech therapy performed for each month of 1995, the quality trend indicator report for each month of 1995, and the CNA hours of labor per patient day for each pay period of 1995.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

> BEVERLY HEALTH AND REHABILITATION SERVICES, INC., ITS OPERATING REGIONAL OFFICES, WHOLLY-OWNED SUBSIDIARIES AND INDIVIDUAL FACILITIES AND EACH OF THEM AND/OR ITS WHOLLY-OWNED SUBSIDIARY BEVERLY ENTERPRISES-MISSISSIPPI, INC., D/B/A BEVERLY HEALTH CARE-CENTREVILLE, A SINGLE EMPLOYER